

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP RAY HERRINGTON,

Defendant-Appellant.

UNPUBLISHED

August 25, 2011

No. 296655

St. Claire Circuit Court

LC No. 09-002367-FH

Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and operating a vehicle with a suspended license, MCL 257.904(1). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to seven months' imprisonment for his felon in possession of a firearm conviction, two years' imprisonment for his felony-firearm conviction, and 93 days' imprisonment for his driving without a license conviction. Because we conclude that there were no errors requiring reversal, we affirm.

I. FACTS AND PROCEDURAL BACKGROUND

This case concerns the discovery of a firearm during the search of a car. On August 26, 2009, Port Huron Police Officer James Gilbert received information that a white car coming from Pontiac would be driving nearby and would be engaged in illegal activity, and he relayed that information to St. Clair County Sheriff's Officer James Spadafore. As a result, Spadafore performed surveillance of a white Cadillac in the area of Reid and Mason in the city of Port Huron, believing there was a weapon in the vehicle. Spadafore observed defendant and another man walking towards the vehicle; defendant was carrying something that was three to four feet long underneath his arm. Spadafore believed that defendant was carrying a gun, but he could not be sure.

Based on Spadafore's surveillance, Police Officer Heighton performed a stop on the white Cadillac in his marked police vehicle. At the time, Gilbert, who also participated in the stop, checked the license plate registration of the Cadillac and determined that the plate was improper. Defendant and the other man were put in handcuffs and placed in the back of a police car. St. Clair County Sheriff's Officer Michael Garvin searched the passenger front seat, the console, and the glove compartment of the vehicle after the stop. Garvin found some pills inside

a brown paper bag in the console and a nine millimeter loaded magazine in the glove compartment. Gilbert searched the trunk of the vehicle and found a rifle wrapped in a brown blanket. The magazine found in the glove compartment could be used with the rifle found in the trunk. The pills were later identified as hydromorphone, also known as Dilaudid.

Gilbert later interviewed defendant at the St. Clair County Jail. Defendant admitted that he put the rifle in the trunk. Defendant indicated that he brought the gun to a friend's house to see about trading it for some rims for his car. One of the rims was bent, so defendant decided not to trade the rifle and put the rifle in the trunk.

At a pretrial hearing on November 2, 2009, defendant moved to suppress evidence from the search of the Cadillac on the basis that the warrantless search was illegal. An evidentiary hearing was held on the suppression motion on December 1, 2009. The trial court denied the motion to suppress, concluding that the information Gilbert received from a confidential informant regarding the car was sufficiently reliable, the vehicle had an improper license plate, and the police performed a proper inventory search.

A jury trial was held on December 15 and 16, 2009. The jury convicted defendant of felon in possession of a firearm, felony-firearm and driving on a suspended license, but it acquitted defendant of drug possession. Defendant now appeals.

II. SUPPRESSION

Defendant's only issue on appeal is that the trial court erred in denying his motion to suppress the evidence obtained from the vehicle because the evidence was the fruit of an illegal search after an unlawful vehicle stop and temporary detention of defendant. We disagree. A trial court's findings of fact regarding a motion to suppress evidence are reviewed for clear error, and the trial court's ultimate ruling is reviewed de novo. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *People v Brown*, 279 Mich App 116, 127; 755 NW2d 664 (2008).

Both the United States and Michigan constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Whether a search or seizure is reasonable depends upon the facts and circumstances of each case. *People v Brzezinski*, 243 Mich App 431, 433; 622 NW2d 528 (2000). "Generally, items that are seized during an unlawful search or that are the indirect results of an unlawful search may not be admitted as evidence against a defendant under the exclusionary rule." *People v Gonzalez*, 256 Mich App 212, 232; 663 NW2d 499 (2003).

"[T]o effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999). "The reasonableness of an officer's suspicion is determined on a case-by-case basis in light of the totality of the facts and circumstances and specific reasonable inferences he is entitled to draw from the facts in light of his experience." *People v Jones*, 260 Mich App 424, 429; 678 NW2d 627 (2004). A case involving a confidential informant must be tested based on the question of whether the

information received has “sufficient indicia of reliability” to support a reasonable suspicion of criminal activity. See *People v Faucett*, 442 Mich 153, 172; 499 NW2d 764 (1993) (concerning an anonymous tip). Independent police corroboration of an informant's predictions imparts some degree of reliability to the other allegations made by the informant. *Id.* Additionally, a police officer may properly run a computer check on a license plate number in plain view even if the vehicle is not observed to violate any traffic law and there is no other information to suggest that a crime has been or is being committed. *Jones*, 260 Mich App at 427-428.

Similarly, “[a] brief stop of a suspicious individual, in order to maintain the status quo momentarily while obtaining more information, may be reasonable.” *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992). An investigatory stop “must be founded on a particularized suspicion, based on an objective observation of the totality of the circumstances, that the person stopped has been, is, or is about to be involved in criminal wrongdoing.” *Id.* at 121-122. Whether a detention is too long depends upon “whether the police were diligently pursuing a means of investigation which was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain those stopped.” *Id.* at 123.

In this case, police officers properly stopped defendant’s vehicle and temporarily detained defendant. They had an articulable and reasonable suspicion that the occupants of the white Cadillac, defendant in particular, were violating the law. Gilbert received information from a confidential informant that two men would be driving in Port Huron in a white Cadillac with a gun in the car. The confidential informant had provided information about criminal activity to Gilbert in the past, and Gilbert found that the information previously provided by the confidential informant was “credible and reliable and, um, proven to be accurate.” Moreover, the information provided by the confidential informant was corroborated by Spadafore’s surveillance of the vehicle. Spadafore found the car in the area indicated by the confidential informant and saw defendant carrying something that looked like a rifle and placing it in the trunk of the white Cadillac. Although having a gun alone is not a crime, the fact that a confidential informant, who had previously provided information to the police regarding other criminal activity, informed the police about the white Cadillac and the gun amounts to reasonable suspicion sufficient for a stop. Moreover, Gilbert checked the Cadillac’s license plate and discovered that the plate had no title information in the computer and was not registered to any particular vehicle, but was registered to someone from Pontiac. That the license plate was not registered to the car amounted to reasonable suspicion that a law was being violated. Taken together, there was particularized suspicion that defendant was involved in criminal wrongdoing to temporarily detain him. During the detention, it was discovered that defendant lacked a valid driver’s license and had been driving without a license, further justifying his detention. As a result, defendant’s Fourth Amendment right to be free from an unreasonable seizure was not violated by the police stop of the white Cadillac and his temporary detention.

To constitute a constitutionally reasonable search, a search must have been executed pursuant to a warrant or based upon a specific exception to the warrant requirement. *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). One exception to the warrant requirement exists to allow the police to conduct an inventory search of a car following an arrest or before an impoundment. *People v Houstina*, 216 Mich App 70, 77; 549 NW2d 11 (1996); see *People v Toohey*, 438 Mich 265, 277-280; 476 NW2d 16 (1991). “[T]he validity of an

inventory search of the car depends on whether there are standardized criteria, policies, or routines regulating how inventory searches [may] be conducted.” *People v Poole*, 199 Mich App 261, 265; 501 NW2d 265 (1993). A policy is required “to prevent inventory searches from being used as ‘a ruse for general rummaging to discover incriminating evidence[.]’” *Id.*, quoting *Florida v Wells*, 495 US 1, 4; 110 S Ct 1631; 109 L Ed 2d 1 (1990). The existence of a standard police procedure may be established through the testimony of an officer. *People v Green*, 260 Mich App 392, 410; 677 NW2d 363 (2004), overruled on other grounds in *People v Anstey*, 476 Mich 436, 447; 719 NW2d 579 (2006). In determining the validity of an inventory search, “the lack of an underlying motive or bad faith of the police in conducting an inventory is important.” *Green*, 260 Mich App at 413.

In this case, the trial court properly concluded that the search of the Cadillac was lawful pursuant to an inventory search before the vehicle was impounded. Police Deputy Matthew King testified that he performed an inventory search of the white Cadillac pursuant to an official policy because the vehicle was going to be impounded due to the improper license plate. Impoundment was also proper because defendant lacked a valid driver’s license. Pursuant to the policy, King completed an inventory sheet regarding what was found in the Cadillac to ensure that there was a record of what was and what was not in the vehicle when defendant or someone else retrieved it. The search was lawful pursuant to the inventory search before the vehicle was impounded.

Defendant argues that the inventory search was unreasonable and amounted to a “ruse” because the police did not document all of the objects in the vehicle on the inventory sheet, disregarding, among other things, a hat, tools, duct tape, jumper cables and compact discs. The fact that King did not document each and every thing in the vehicle does not mean that the inventory search was “a ruse” or was done in bad faith; it merely demonstrates a lack of attention to detail on the part of King.

Because we conclude that the search of defendant’s car was reasonable pursuant to an inventory search, we need not address defendant’s arguments that the search was improper under the search incident to an arrest and automobile exceptions to the warrant requirement. The trial court did not err in denying defendant’s motion to suppress because the police engaged in a lawful stop and subsequent search of the vehicle.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly